



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0298; FRL-9912-21-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Portable Fuel Container Amendment to Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision involves removing the Commonwealth's portable fuel container (PFC) regulations for control of evaporative emissions from new and in-use PFCs from the Pennsylvania SIP. In the submittal, Pennsylvania demonstrates that Federal PFC regulations promulgated by EPA in 2007 are expected to provide equal to or greater emissions reductions than those resulting from the Commonwealth's. EPA is approving this revision removing the Commonwealth's PFC regulations because the revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0298 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. Mail: EPA-R03-OAR-2014-0298, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0298. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2014, the Commonwealth of Pennsylvania submitted a formal revision to its SIP.

The SIP revision consists of removing from the Pennsylvania SIP the Commonwealth's PFC regulations, formerly located at 25 *Pa. Code* §§ 130.101-130.108, relating to the control of evaporative emissions from new and in-use PFCs. The Commonwealth requested the removal of

Pennsylvania's state-specific regulations because they have been superseded by new, more stringent Federal PFC regulations, codified at 40 CFR 59.600-59.699.

The Commonwealth's PFC regulations were published October 5, 2002 (32 *Pa.B.* 4819) and limited emissions of volatile organic compounds (VOCs) into the atmosphere from the use of PFCs designed to hold gasoline. The regulations restricted the sale, supply, offer for sale, and manufacture of PFCs and spouts for sale and for use in the Commonwealth on or after January 1, 2003. The regulations were part of the Commonwealth's plan to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ground-level ozone since VOCs are a precursor to the formation of ground-level ozone, and high concentrations of ground-level ozone are a serious public health and welfare threat. The PFC regulations were approved as a SIP revision by EPA on December 8, 2004. 69 FR 70893. Following the regulations' approval into the Pennsylvania SIP, the PFC regulations were included as a VOC control measure in Redesignation Requests and Maintenance Plans for the 1997 8-hour ozone NAAQS as well as the Attainment Demonstration for the Philadelphia Area Ozone Nonattainment Area for the 1997 8-hour ozone NAAQS.

On February 26, 2007, EPA promulgated Federal PFC requirements (72 FR 8428), which were codified at 40 CFR 59.600-59.699 and became effective nationwide beginning January 1, 2009. The Pennsylvania Environmental Quality Board (EQB) subsequently amended 25 *Pa. Code* Chapter 130 (relating to standards for products) by publishing the repeal of the PFC regulations (25 *Pa. Code* §§ 130.101—130.108) on July 14, 2012 (42 *Pa.B.* 4463). The Federal PFC regulations aim to reduce nationwide hydrocarbon emissions from containers due to evaporation,

permeation, and spillage and are more stringent than those found in the Pennsylvania regulations.

II. Summary of SIP Revision

Pennsylvania compared requirements of the Commonwealth's former PFC regulations with the Federal PFC requirements (Table 1). Each of the Federal requirements is equally as stringent as, or more stringent than, the Commonwealth's PFC requirements and achieve greater emission reductions than Pennsylvania's PFC regulations:

- Pennsylvania's regulations applied only to PFCs for gasoline fuels whereas the Federal regulations apply to portable containers for diesel and kerosene as well as for gasoline fuels.
- Pennsylvania's regulations required automatic shut-off spouts whereas the Federal regulations do not require automatic shut-off spouts. In 72 FR 8428, 8500, EPA notes that automatic shut-off spouts actually increase spillage and emissions due to the wide variety of fill-hole designs on the receiving fuel tanks, resulting in the auto shut-off spouts not working well with a variety of equipment types.
- The Federal permeation and evaporation standard for PFCs of less than 0.3 grams hydrocarbons per gallon of fuel per day is 25 percent more stringent than the permeation standard of less than 0.4 grams per gallon of gasoline per day in Pennsylvania's regulations.
- Pennsylvania's regulations did not prevent cross-state

border sales of non-compliant PFCs, whereas the Federal requirements apply to all PFCs manufactured in or imported into the United States for use in the United States beginning January 1, 2009. This reduces the opportunity for cross-state border sales of non-compliant PFCs.

Table 1. Comparison of Pennsylvania’s and EPA’s PFC Requirements

Applicable VOC Emission Control Requirement	Pennsylvania’s PFC Requirements	Federal PFC Requirements
One Opening per Container	Required	Required
Spout: Auto Close and Seal	Required	Required
Spout: Auto Shut-off	Required	Not Required
Warranty	Required	Required
Permeation Barrier Seal	Less than 0.4 grams hydrocarbons/gallon/day	Less than 0.3 grams hydrocarbons/gallon/day
Non-gasoline PFC Affected	No	Yes
Applicable to All 50 States	No	Yes

Section 110(l) of the CAA states that the EPA Administrator may not approve a revision to a SIP if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress or any other applicable requirement of the CAA. EPA finds Pennsylvania has demonstrated that repealing the Commonwealth’s regulatory requirements and relying on the Federal requirements for PFCs is not contrary to section 110(l) by calculating and comparing estimated statewide VOC emissions resulting from both the Commonwealth and Federal PFC regulations for the years 2002, 2009, and 2018 (Table 2). A more detailed description of Pennsylvania’s methodology for calculating VOC emissions and EPA’s evaluation can be found in the Technical Support Document (TSD) with Docket ID

No. EPA-R03-OAR-2014-0298 prepared in support of this rulemaking action.

Table 2. Comparison of VOC Emissions Estimates for Federal and Pennsylvania PFC Regulations

	2002	2009	2018
PA Rule VOC Emissions in tons per year (TPY)	12,255.32*	8,923.08	6,148.05
Federal Rule VOC Emissions (in TPY)	12,255.32*	7,917.66**	3,202.11**
Additional VOC Emissions Reductions (in TPY) from Federal Rule	N/A	1,005.42	2,945.94

*The 2002 actual VOC emissions estimate was used as the basis for the demonstration for both the Commonwealth and the Federal calculations because neither the Federal nor the Commonwealth regulation was in effect in 2002. *See* TSD for a more detailed explanation.

**Assumes some Commonwealth-compliant PFC containers remain in use until replaced with Federal-compliant containers as discussed in more detail in the TSD.

EPA finds the repeal of the provisions set forth in 25 *Pa. Code* §§ 130.101-130.108 and removal from the Pennsylvania SIP do not negatively affect ozone air quality because the more stringent Federal PFC requirements at 40 CFR 59.600-59.699 supersede the Commonwealth's regulations. The reductions of VOC emissions achieved through the Commonwealth's PFC regulations will be maintained and likely exceeded by the VOC emission reductions achieved through the Federal PFC requirements because the Federal regulations are more stringent.

III. Final Action

EPA is approving the revisions to the Commonwealth of Pennsylvania's SIP which remove the Commonwealth's PFC regulations because it is expected that reliance on the more stringent Federal PFC standards will ensure that emission reductions equivalent to or greater than those in the repealed Pennsylvania PFC regulations will continue to be achieved in the Commonwealth. Accordingly, it is expected that this SIP revision will not have a negative impact on the emission reductions claimed in the Pennsylvania SIP nor on Pennsylvania's attainment of the NAAQS for ozone. Thus, EPA can approve this revision in compliance with section 110(l) of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This rulemaking action approving Pennsylvania's SIP revision, which involves removing the Commonwealth's PFC regulations because they are being superseded with the Federal PFC regulations, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 29, 2014.

Shawn M. Garvin,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. In § 52.2020, the table in paragraph (c)(1) is amended by removing the entries for Chapter 130 -- Standards for Products, Subchapter A - Portable Fuel Containers, Sections 130.101 through 130.108.

3. Section 52.2037 is amended by adding paragraph (t) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(t) On July 14, 2012, Pennsylvania repealed the provisions set forth in Sections 130.101 through 130.108 pertaining to Portable Fuel Containers. Pennsylvania's regulations in the Pennsylvania State Implementation Plan were removed because they are superseded by more stringent Federal requirements codified at 40 CFR 59.600 through 59.699, relating to control of evaporative emissions from new and in-use portable fuel containers.

[FR Doc. 2014-14027 Filed 06/16/2014 at 8:45 am; Publication Date: 06/17/2014]